

**SCHEDULE A**

	<b><i>PLAINTIFF'S UNCONTESTED FACTS</i></b>	<b><i>DEFENDANT'S INADEQUATE RESPONSE</i></b>
17.	Plaintiff worked between 75-80 hours per week at Newmark. (AR P00588)	Fact disputed without a good faith basis. No cited support in the AR.
31.	Plaintiff was required to travel frequently. (AR P00590)	Fact disputed without a good faith basis. No cited support in the AR.
39.	Plaintiff averaged 13-16 hour per day working. (AR P00695)	Fact disputed without a good faith basis. No cited support in the AR.
40.	Plaintiff was in the office at 7:00 a.m.-8:00 p.m. (AR P00695)	Fact disputed without a good faith basis. No cited support in the AR.
41.	Daily, Plaintiff initiated/responded to 50-60 phone calls & 175-200 emails. (AR P00695)	Fact disputed without a good faith basis. No cited support in the AR.
42.	Daily, Plaintiff reviewed financially complex commercial real estate contracts. (AR P00696)	Fact disputed without a good faith basis. No cited support in the AR.
43.	In 2002 Plaintiff began to experience new physical symptoms. (AR P00591)	Fact disputed without a good faith basis. No cited support in the AR.
44.	Plaintiff became weak and unstable on his feet, unable to walk at his regular pace or up/down inclines without taking rests. (AR P00591)	Fact disputed without a good faith basis. No cited support in the AR.
45.	Plaintiff's heart rate became erratic - racing and then precipitously dropping. (AR P00591)	Fact disputed without a good faith basis. No cited support in the AR.
46.	Plaintiff's primary care physician ordered stress test – confirmed arrhythmia/irregular heart rates. (AR P00591, AR P00601, AR P00614, AR P00615)	Fact disputed without a good faith basis. No cited support in the AR.
47.	Plaintiff's electrophysiology tests and Tilt-Table Test confirmed Plaintiff had Near-Syncope, associated Hypotension and Inappropriate Sinus Tachycardia – caused by autonomic dysfunction and that Plaintiff was not a candidate for ablation. (AR P00614 – AR P00616)	Fact disputed without a good faith basis. No cited support in the AR.
54.	Toprol-XL's side effects caused Plaintiff lightheadedness, dizziness, shortness of breath with minimal exertion, and extreme fatigue. (AR P00603, AR P00615, AR P00616)	Fact disputed without a good faith basis. No cited support in the AR.
55.	Daily, Plaintiff ingests 350 mg of Toprol-XL – a likely cause of the disabling symptoms in #54. (AR P00603, AR P00615, AR P00616)	Fact disputed without a good faith basis. No cited support in the AR.
57.	Toprol-XL medication has profoundly impacted Plaintiff's ability to work. (AR P00591, AR P00592, AR P00602, AR P00616)	Fact disputed without a good faith basis. No cited support in the AR.
58.	Plaintiff must continue to ingest massive doses of Toprol-XL each day to survive. (AR P00603)	Fact disputed without a good faith basis. No cited support in the AR.
59.	Toprol-XL's side effects alone are sufficient to disable Plaintiff. (AR P0060, AR P00603, AR P00615, AR P00616)	Fact disputed without a good faith basis. No cited support in the AR.
64.	There is no known cure for dysautonomia. (AR P00598, AR P00602)	Fact disputed without a good faith basis. No cited support in the AR.

66.	A walk through an airport concourse with his luggage poses severe challenges to Plaintiff. (AR P00599)	Fact disputed without a good faith basis. No cited support in the AR.
67.	At any moment, Plaintiff's syncope could cause him to fall; a much-increased risk of physical injury/harm. (AR P00599)	Fact disputed without a good faith basis. No cited support in the AR.
68.	Purposeful walking alone causes Plaintiff's heart rate to increase to an unsafe range. (AR P00599)	Fact disputed without a good faith basis. No cited support in the AR.
69.	Plaintiff is unable to travel on behalf of his company, as his job required. (AR P00599)	Fact disputed without a good faith basis. No cited support in the AR.
70.	Plaintiff's symptoms strike without warning. (AR P00592, AR P00599)	Fact disputed without a good faith basis. No cited support in the AR.
71.	Plaintiff cannot prevent symptomatic episodes. (AR P00599)	Fact disputed without a good faith basis. No cited support in the AR.
72.	Dysautonomia and ingestion of Toprol-XL daily, forced Plaintiff to eliminate many physical activities because they resulted in either rapid-fire heart rate episodes, or because of extreme fatigue. (AR P00599)	Fact disputed without a good faith basis. No cited support in the AR.
73.	By the end of 2005, Plaintiff stopped his sports activities. (AR P00592)	Fact disputed without a good faith basis. No cited support in the AR.
74.	Plaintiff suffers from uncontrolled diarrhea. (AR P00592)	Fact disputed without a good faith basis. No cited support in the AR.
75.	Plaintiff arranged for dinner meetings at restaurants near his office so that he could obtain his choice table near the men's room. (AR P00592)	Fact disputed without a good faith basis. No cited support in the AR.
76.	Plaintiff kept extra pairs of underwear and pants in his office to deal with unexpected and embarrassing accidents. (AR P00592)	Fact disputed without a good faith basis. No cited support in the AR.
77.	Plaintiff's physical appearance deteriorated significantly in 2006. (AR P00592, AR P00593)	Fact disputed without a good faith basis. No cited support in the AR.
78.	Throughout 2006, Plaintiff's fellow employees and superiors witnessed many incidents where Plaintiff experienced the varied symptoms caused by his Dysautonomia. (AR P00617 – AR P000622, AR P000625, AR P00626)	Fact disputed without a good faith basis. No cited support in the AR.
79.	Symptoms witnessed by colleagues and others included Plaintiff's sickly physical appearance, flu-like symptoms, uncontrolled perspiration, and chills. (AR P00617 – AR P000622, AR P000625, AR P00626, ARP00628 – AR P00633)	Fact disputed without a good faith basis. No cited support in the AR.
80.	Symptoms witnessed by colleagues and others included numerous instances of "grey outs" or near fainting (syncope), pervasive fatigue, and embarrassing incidents of uncontrolled diarrhea. (AR P00617 – AR P000622, AR P000625, AR P00626, ARP00628 – AR P00633)	Fact disputed without a good faith basis. No cited support in the AR.
81.	Symptoms witnessed by colleagues and others included falling asleep and regular napping during the work day. (AR P00621, AR P00626)	Fact disputed without a good faith basis. No cited support in the AR.

87.	Dysautonomia is neurologically based. Prudential never had Plaintiff's claim evaluated by a neurologist. (AR P00987 – AR P00989, AR P00995, AR P00996, AR P00998, AR P00999, AR P01002 – AR P01011)	Fact disputed without a good faith basis. No cited support in the AR.
88.	No physician reviewer for Prudential ever sought a "peer to peer" with any of Plaintiff's treating physicians. (AR P00404 – AR P00409, AR P00422 – AR P00424, AR P00740 – AR P00746)	Fact disputed without a good faith basis. No cited support in the AR.
89.	Prudential's decision to deny benefits to Plaintiff was based solely on "records reviews" by its own consultant physicians. (AR P00404 – AR P00409, AR P00422 – AR P00424, AR P00740 – AR P00746)	Fact disputed without a good faith basis. No cited support in the AR.
90.	Prudential withheld from its physician consultants all of the materials provided in the administrative appeal submitted by Plaintiff on May 31, 2007. (AR P00404 – AR P00409, AR P00422 – AR P00424, AR P00740 – AR P00746, AR P00674 – AR P00734)	Fact disputed without a good faith basis. No cited support in the AR.
91.	Prudential withheld from its physician consultants the sworn statement of Mr. Friedman himself. (AR P00587 – AR P00593, AR P00404 – AR P00409, AR P00422 – AR P00424, AR P00740 – AR P00746)	Fact disputed without a good faith basis. No cited support in the AR.
92.	Prudential withheld from its physician consultants the sworn statement of Plaintiff's treating primary care physician, Gerald S. Bahr, M.D. (AR P00601 – AR P00604, AR P00404 – AR P00409, AR P00422 – AR P00424, AR P00740 – AR P00746)	Fact disputed without a good faith basis. No cited support in the AR.
93.	Prudential withheld from its physician consultants the sworn statement of Plaintiff's treating cardiologist/electrophysiologist, Steven L. Zweibel, M.D. (AR P00614 – AR P00616, AR P00404 – AR P00409, AR P00422 – AR P00424, AR P00740 – AR P00746)	Fact disputed without a good faith basis. No cited support in the AR.
94.	Prudential withheld from its physician consultants the sworn statement of Plaintiff's treating physician Mark H. Gardenswartz, M.D., a renowned expert on Dysautonomia. (AR P00596 – AR P00600, AR P00404 – AR P00409, AR P00422 – AR P00424, AR P00740 – AR P00746).	Fact disputed without a good faith basis. No cited support in the AR.
95.	No physician consultant on behalf of Prudential has ever rebutted the sworn statements of Gerald S. Bahr, M.D., Steven L. Zweibel, M.D. or Mark H. Gardenswartz, M.D. (AR P00404 – AR P00409, AR P00422 – AR P00424, AR P00740 – AR P00746)	Fact disputed without a good faith basis. No cited support in the AR.
96.	The sworn statements of Drs. Bahr, Zweibel and Gardenswartz stand unrebutted in this case. (AR P00601 – AR P00604, AR P00614 – AR P00616, AR P00596 – AR P00600)	Fact disputed without a good faith basis. No cited support in the AR.



97.	Prudential withheld from its physician consultants the sworn statements from Barry M. Gosin, Joseph I. Rader, Jessica Tierno, Elizabeth Ann Gilbert or Yee Cent Wong. (AR P00404 – AR P00409, AR P00422 – AR P00424, AR P00740 – AR P00746).	Fact disputed without a good faith basis. No cited support in the AR.
98.	The sworn statements of Barry M. Gosin, Joseph I. Rader, Jessica Tierno, Elizabeth Ann Gilbert and Yee Cent Wong stand un rebutted in this case. (AR P00617 – AR P00618, AR P00619 – AR P00620, AR P00621 – AR P00623, AR P00624 – AR P00627, AR P00628 – AR P00633)	Fact disputed without a good faith basis. No cited support in the AR.
99.	Prudential has not and does not contest Plaintiff's diagnosis of Dysautonomia. (AR P00596, AR P00598, AR P00600, AR P00602, AR P00616)	Fact disputed without a good faith basis. No cited support in the AR.
100.	Prudential has not and does not contest that heavy doses of Toprol-XL can disable a patient. (AR P00592, AR P00593, AR P00603, AR P00704 – AR P00712)	Fact disputed without a good faith basis. No cited support in the AR.
102.	In its denial letter, Prudential never addressed Toprol-XL's impact on Plaintiff's ability to perform his regular occupation. (AR P01016 – AR P01021)	Fact disputed without a good faith basis. No cited support in the AR.
103.	In its denial letter, Prudential never addressed the extreme fatigue which plagues Plaintiff. (AR P01016 – AR P01021)	Fact disputed without a good faith basis. No cited support in the AR.
104.	Prudential has not and does not contest the demanding requirements of Plaintiff's occupation. (AR P00009, AR P00018, AR P01016 – AR P01021, AR P00695 – AR P00696)	Fact disputed without a good faith basis. No cited support in the AR.
105.	Prudential has never defined what occupational duties it contends Plaintiff can still perform. (AR P00009, AR P00018, AR P01016 – AR P01021, AR P00695 – AR P00696)	Fact disputed without a good faith basis. No cited support in the AR.
106.	Prudential has never defined what occupational duties it contends Plaintiff cannot perform. (AR P00009, AR P00018, AR P01016 – AR P01021, AR P00695 – AR P00696)	Fact disputed without a good faith basis. No cited support in the AR.
107.	Plaintiff's detailed job description is un rebutted in the record. (AR P00009, AR P00018, AR P00695 – AR P00696)	Fact disputed without a good faith basis. No cited support in the AR.
108.	Prudential has never acknowledged, disputed, or addressed the disabling fatigue with which Plaintiff contends every day of his life. (AR P00009, AR P00010, AR P00016, AR P00587 – AR P00593, AR P00622, AR P00625, AR P00628 – AR P00633)	Fact disputed without a good faith basis. No cited support in the AR.
109.	Prudential has never acknowledged, disputed or addressed the restrictions and limitations identified by Plaintiff's treating physicians. (AR P00004, AR P00016, AR P00021, AR P00596 – AR P00600, AR P00601 – AR P00604, AR P00614 – AR P00616)	Fact disputed without a good faith basis. No cited support in the AR.